

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 208 of 1994****For Approval and Signature:****HONOURABLE MR.JUSTICE R.P.DHOLAKIA : Sd/-****HONOURABLE MR.JUSTICE KS JHAVERI : Sd/-**

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¹ Whether Reporters of Local Papers may
be allowed to see the judgment ?

² To be referred to the Reporter or not ?

³ Whether their Lordships wish to see the
fair copy of the judgment ?

Whether this case involves a
substantial question of law as to the
⁴ interpretation of the constitution of
India, 1950 or any order made
thereunder ?

⁵ Whether it is to be circulated to the
civil judge ?

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KIKUBHAI LALUBHAI PATEL - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :

MS CM SHAH FOR HL PATEL ADVOCATES for Appellant(s) : 1,
MR KP RAVAL APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 20/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This Criminal Appeal under Sec.374 of the Code of Criminal Procedure ('the Code' for short) has been filed by the appellant-original accused, who has been convicted to suffer RI for life and to pay a fine of Rs.500/-, in default, to suffer RI for six months for the offence punishable under Section 302 of the Indian Penal Code vide judgment and order of conviction dated 31.01.1994 delivered by the Learned Addition Sessions Judge, Valsad camp at Navsari, in Sessions Case No.60 of 1991.
2. The case of the prosecution in short is that on 31.01.1991 at about 8:00 p.m., the complainant was in his house while his father, Ramu had gone out. After some time, he heard some shouts from the house of Babarbhai and, therefore, he along with his brother, Kalidasbhai had gone towards that direction and found that scuffle was going on

between Ramubhai (deceased) and the appellant-accused and, thereafter, the appellant-accused gave knife blow on the chest of the deceased. As a result of that, the deceased fell down and succumbed to the injuries and, hence, the appellant-accused ran away from the place of offence. Accordingly, offence came to be registered before Pardi Police Station for the offence punishable under Section 302 of Indian Penal Code as Pardi Police Station I-C.R.No.18/1991.

3. Police started investigation, recorded statements of witnesses, drew inquest panchnama in presence of panchas, arrested the appellant-accused and also made arrangements for sending dead body of the deceased for postmortem. He also prepared panchnama of scene of offence, collected control soil from the scene of offence and also seized other articles by preparing panchnama to that effect and sent the same to FSL for analysis. On receiving the postmortem

and FSL reports, same were kept in investigation file. Upon completion of investigation, charge sheet was submitted against the accused in the Court of Learned Learned Judicial Magistrate, First Class, Pardi.

4. As the offence alleged against the accused was exclusively triable by the Court of Sessions, the Learned Learned Judicial Magistrate, First Class, Pardi committed the case to the Court of Sessions at Navsari where it was numbered as Sessions Case No.60 of 1991 and transferred to the Court of Learned Additional Sessions Judge, Valsad camp at Navsari, for trial. The learned Judge framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried.
5. To prove the case against the accused, the prosecution examined 8 prosecution witnesses and also relied on various documentary evidence.
6. On submission of closing purshis by the

prosecution, Learned Additional Sessions Judge recorded the further statement of the accused under Section 313 of the Code. Thereafter, on hearing, the Learned Additional Sessions Judge, Valsad camp at Navsari, delivered the impugned judgment, which gave rise to prefer this Criminal Appeal.

7. Heard learned Counsel, Ms.C.M. Shah for HL Patel Advocates and learned APP, Mr.K.P.Raval for the State. We have been taken through various oral as well as documentary evidence and the reasoned judgment delivered by the Court below.
8. After taking us through the evidence of P.W.No.4, Shankarbhai Ramubhai Patel (Complainant), Exh.21, who is son of the deceased and who filed the complaint, Exh.21 claiming to be an eye witness, P.W.No.5, Kalidas Patel, Exh.22, who is also claiming to be an eye witness and also brother of the complainant and son of deceased and P.W.No.6, Somabhai Bhikhabhai Patel, Exh.24, who is

brother of the deceased, it has been argued by the learned counsel for the appellant-accused, Ms.C.M. Shah that all the above referred three witnesses claimed themselves to be eye witnesses. She has also taken us through the detailed evidence of above referred witnesses and argued that though they are the nearest relatives of the deceased, their evidence is not trustworthy. If on a minute scrutiny of the evidence of above referred witnesses, they are found to be believable, Court can certainly rely upon the same. It is further argued that in this case, above referred three witnesses are not the eye witnesses at all because when they reached the scene of offence, the appellant-accused has already left the place of offence throwing away the knife on the spot. She has also taken us through the evidence of P.W.No.6, Naranbhai Gandabhai, Exh.23 and argued that this witness in his deposition before the Court has narrated that at the time of incident, he was at his residence and

when her daughter came and informed him about the incident, he went to the scene of offence. Except that, there are no other witnesses or evidence to connect the accused with the crime in question. She has also argued that the incident has taken place at about 8:30 p.m. and, therefore, the question of full moon or full moon light does not arise. She has also argued that a mango tree upon which alleged electronic bulb was there is not very near to the scene of offence. The electronic bulb was on the branch of another mango tree, which was far away from the place of offence and, hence, keeping in mind the distance between the scene of offence and the light that would be thrown from the size of bulb, it cannot be said that the person can be identified from the said light, if at all, it is required to be believed. It has been argued that there are no other evidence worth the name to connect the accused with the crime in question and the above referred witnesses upon which

reliance has been placed by the learned counsel for the appellant-accused are not present on the spot, but they were at their residence and reached there after hearing the sound and, hence, the appellant-accused has been falsely involved into crime in question on the ground of dispute regarding the marriage of one Parvati. It has been argued that there are no evidence on record, by which, the prosecution is able to prove the motive because Parvati and her mother have not been examined. In short, the prosecution has failed to prove the motive also. It has been argued that the present appellant has been falsely involved into the crime in question on an assumption that as these people were not accepting the relation of the alleged accused with Parvati, he might have killed. Over and above, keeping in mind the fact that the appellant has already undergone more than 12 years of imprisonment and it can be said to be a case of only one blow, case of the present appellant requires

consideration and benefit of doubt may be given to the present appellant.

9. Learned APP, Mr.K.P. Raval, has also taken us through the oral as well as documentary evidence and also through the impugned judgment delivered by the court below and submitted that the prosecution has proved the case against the appellant-accused beyond reasonable doubt. Even motive is also established and all the witnesses reached before occurrence of the incident and have seen the incident being taking place and, therefore, appeal deserves to be dismissed and the Judgment and Order of conviction is required to be confirmed.
10. We have gone through the oral as well as documentary evidence shown to us by the learned counsel for the respective parties together with the reasoned judgment delivered by the court below.
11. It is required to be noted that for the purpose of deciding this matter, the evidence of alleged eye witnesses i.e. the P.W.Nos.4,

5, and 6, who are sons and brother of the deceased is required much scrutiny. Out of above referred witnesses, P.W.No.4 is the complainant, who has filed the complaint and through him, the prosecution has proved the complaint, Exh.21. It is required to be noted that all the witnesses are the nearest relatives of the deceased and as per the evidence on record, all were at their residence and all have started towards the direction of the scene of offence after hearing the sound for help. It is required to be noted that out of three, the brother of the deceased (P.W.No.6, Naranbhai Gandabhai, Exh.23) had even not heard the sound, but when he was informed by his daughter regarding the incident, he went to the scene of offence. From the evidence of this witness, it is established that he was at his residence at the relevant point of time. It is established from the evidence on record that there was a distance between the house of the victim and the scene of offence and as

per the evidence of these witnesses, even the complainant can reach there after a period of 10 minutes and according to him, he went to the scene of offence after the incident. In short, looking to the way in which the incident has taken place, not a single person can reach at the time of incident. In view of the above, it is established that there is no witness of incident or we can say that the above referred witnesses are not the witnesses of incident as they have not seen the incident, but they reached the scene of offence after the appellant-accused left the scene of offence. It is required to be noted that the incident has taken place at about 8:30 p.m. and, hence, question of full moon does not arise at all keeping in mind the distance between two Mango trees and the scene of offence. If we believe that there was a bulb then also, it cannot be said that the person can see with the help of above referred bulb. It is established that the alleged bulb was on the branch of the tree

and there is no other light on the day of incident as it was not a moon light day and, hence, it is not possible for anyone to see a person from said light.

12. We have evaluated the evidence on record, more particularly, the evidence of above referred witnesses, who claimed themselves to be eye witnesses and nearest relatives of the deceased. Since they are the relatives of the deceased, their evidence require much more scrutiny and we have done the same. We are of the opinion that they are not the witnesses of incident and, hence, their presence at the time of incident creates doubt in the mind of the Court.

13. Even motive is also not proved by the prosecution. It is to be noted that the prosecution has not examined Parvati or her mother to prove the same. From the evidence, it has been established that the appellant-accused wanted to marry with Parvati and it was also agreed by her mother, but it was not liked by the deceased. However, there is no

concrete evidence on record to connect the accused with the crime in question. We are aware that motive is not much more important in this matter, but then also, the prosecution has relied upon the motive. We have dealt with the same and on a minute scrutiny of all the three above referred witnesses, we are of the opinion that they are not the witnesses of incident and have not seen the incident in question as they reached the scene of offence later on. Except that, there are no other evidence to connected the accused with the crime in question and, therefore, the benefit of doubt is required to be given to the accused.

14. In the result, Criminal Appeal is allowed. Judgment and order of conviction and sentence dated 31.01.1994 delivered by the Learned Sessions Judge, Valsad camp at Navsari in Sessions Case No.60 of 1991 are quashed and set aside. He is therefore ordered to be set at liberty forthwith, if not required in any other offence.

Sd/- *Sd/-*
(R.P.DHOLAKIA, J.) (K.S.JHAVERI, J.)

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